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MERCHANTS' & MINERS' TRANSP. CO. *v.* MASURY.

June 13, 1907.

[57 S. E. 613.]

New Trial—Grounds—Demurrer to Evidence—Scope of New Trial.

—In an action against a carrier for injuries to goods in transportation, defendant demurred to the evidence, and, after verdict for plaintiff subject to the opinion of the court, moved to set aside the verdict and for a new trial on the ground that the evidence was insufficient. The court set aside the verdict, but refused to grant a new trial awarding a writ of inquiry to assess the damages and subsequently entering judgment in plaintiff's favor for the amount found. Held, that after the verdict was set aside defendant should have been permitted to withdraw its demurrer to the evidence, and that a new trial should have been awarded.

MILLER *v.* FERGUSON et al.

June 20, 1907.

[57 S. E. 649.]

1. Frauds, Statute of—Parol Partnership Contract—Validity.—A parol agreement creating a partnership to purchase and sell real estate for speculation and divide the profits among the partners is not within the statute of frauds, and the existence of the partnership and the interest of the partners in real estate purchased may be proved by parol.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 23, Frauds, Statute of, §§ 135-139.]

2. Partnership—Rights of Partners.—Plaintiff and defendants formed a partnership for the purchase and sale of certain real estate and the division of the profits between themselves. Plaintiff expressed the belief that the property could be purchased for a specified sum and made full disclosures of his information. The property could not be purchased for that sum, and defendants entered into negotiations for its purchase, availed themselves of plaintiff's plans, and finally became the purchasers. They concealed from plaintiff the true facts. Held, that defendants, in view of the confidential relation existing between them and plaintiff, could not exclude him from a participation in the profits resulting from the purchase.

PRESTON et al. *v.* VIRGINIA MINING CO.

June 20, 1907.

[57 S. E. 651.]

1. Partition—Jurisdiction—Co-Tenants.—Where defendant in partition claimed the land in controversy under a title paramount in time and wholly distinct and hostile to that under which complainants